Supreme Court, U.S.
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No. 82-655

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BOARD OF EDUCATION, LEVITTOWN UNION FREE SCHOOL DISTRICT, NASSAU COUNTY, *et al.*,

Appellants,

—v.—

EWALD B. NYQUIST, COMMISSIONER OF EDUCATION OF NEW YORK, *et al.*,

Appellees.

APPEAL FROM THE NEW YORK COURT OF APPEALS

OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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TABLE OF AUTHORITIES

Cases: PAGE

Board of Education v. *Allen*, 20 N.Y.2d 109 (1967), *aff'd*, 392 U.S. 236 (1968) 2

Orr v. *Orr*, 440 U.S. 268 (1979) 2

Other Authorities:

Research Findings and Policy Alternatives: A Second Interim Report of the New York State Special Task Force on Equity and Excellence in Education (1980). 3

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Appellants—some two dozen property-poor rural and suburban school districts, together with twelve school children by their parents or guardians—address this reply to two narrow issues raised by the Motion to Dismiss or Affirm.

A. Appellees' "standing" argument is frivolous

In contending that appellants lack "standing" to challenge inequities in New York's school finance scheme, appellees misstate the record[1] and fail to apprise this Court of its own

1 The "care" with which appellees brief the issues is exemplified by their statement, at page 2 of their Motion to Dismiss or Affirm, that "except for the Levittown Board of Education, the names of appel-

controlling decisions and those of the New York courts. Appellants' case, developed during 13 trial days, consisted almost entirely of evidence demonstrating the adverse impact of the challenged inequities upon plaintiff school districts, their students and those similarly situated. Among the key witnesses, for example, was Prathia Wynn, the mother of plaintiff Simone Wynn, a student in plaintiff Roosevelt School District. Her testimony provided the basis for the lower courts' Finding of Fact 28a, which appears at A126.

On legal grounds, the trial court rejected appellees' standing argument in a pretrial opinion set out at A320-A325. It relied on *Board of Education v. Allen*, 20 N.Y.2d 109 (1967), *aff'd*, 392 U.S. 236 (1968), which upheld the standing of school boards to challenge the manner in which the State allocates education resources. The Appellate Division agreed, adding that "school children represented by their parents" also have standing under recent New York cases. See the opinion reprinted at A35; the standing issue is dealt with at A52. The Court of Appeals simply ignored appellees' standing argument. *See also Orr v. Orr*, 440 U.S. 268 (1979), where this Court held that the circumstance that a plaintiff might not ultimately receive a financial benefit from his challenge to a statute does not deprive him of standing to make the challenge.

B. Appellees' substantive arguments are unworthy

Appellees' principal substantive arguments in support of New York's school finance scheme—which two lower courts found unconstitutional and which even the majority of the Court of Appeals conceded is characterized by "significant inequalities"[2]—are unworthy of the State of New York.

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lants in No. 655 do not appear in the papers filed on this appeal." In fact, the names of all school district and individual appellants *are* listed where one would expect, at the bottom of pages (i) and (ii), the "Parties Below" section of the Jurisdictional Statement.

2 See A12, where Judge Jones, for the majority, conceded that "it must be recognized that there are nonetheless significant inequalities in

Whether New York is a high-spending state compared to other states, and whether the "poorest" New York school district—sparsely populated Salmon River—outspends districts in other states, are beside the point. Appellants contend that, in allocating the State's $10 billion in education resources among approximately 700 New York school districts, something other than the accident of local property wealth ought to determine whether one district is enabled to outspend its neighbors by as much as 5.8 to 1 and, in consequence, provide its children with more of all the things that the courts below specifically found money can buy—smaller classes, more comprehensive curricula, better facilities, and more teaching specialists, speech and hearing therapists, school psychologists, guidance counselors, etc.

Salmon River notwithstanding, the overwhelming pattern in New York is that rich districts outspend poor ones by as much as six to one, and do so because of their greater local property wealth.[3] The inequalities amply documented on this record, found as fact by the lower courts, and expressly conceded by the Court of Appeals, deserve something more than this Court's constitutional blessing. Nothing in this Court's evolving approach to equal protection issues justifies the toothless mode of judicial scrutiny applied by a majority of the Court of Appeals.

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the availability of financial support for local school districts, ranging from minor discrepancies to major differences, resulting in significant unevenness in the educational opportunities offered. These disparities may properly be ascribed in some respects to the wide variances between the property assessment bases on which local district taxes are imposed." (Footnote Omitted.)

3 See not only the careful findings made by the lower courts and accepted by the Court of Appeals, at A98-A110 and A116-A159, but also the charts appended hereto which were prepared by the State's Special Task Force on Equity and Excellence in Education and which were before both the appellate courts below.

For the reasons stated here, in our Jurisdictional Statement, and in the papers filed by the city appellants in No. 639, we urge the Court to note probable jurisdiction and set this case for argument.

Respectfully submitted,

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Research Findings and Policy Alternatives:
A Second Interim Report
of

The New York State Special Task Force
on
Equity and Excellence in Education

September, 1980

TABLE 1

Change In Approved Operating Expenditures Per Pupil (TAPU) By Percentiles, New York State (1974-75 To 1977-78)

Percentile of Students	Approved Operating Expenditures Per Pupil (TAPU)*			
	1974-75	1977-78	Change 1974-75 / 1977-78	
			Number	Percent
1st	$ 785	$ 989	$ 204	26.0
10th	1,117	1,389	272	24.4
20th	1,192	1,472	280	23.5
30th	1,251	1,542	291	23.6
40th	1,341	1,639	298	22.2
50th	1,425	1,788	363	25.5
60th	1,510	1,899	389	25.8
70th	1,602	2,015	413	25.8
80th	1,795	2,255	460	25.6
90th	1,950	2,470	520	26.7
100th	4,004	5,753	1,749	43.7

*The expenditure figures shown here have not been adjusted to compensate for inflation, therefore the percentage increases appear larger because of the inflated value of the dollar. For a definition of various pupil counts, see Appendix B.

SOURCE: Based on data provided by the Information Center on Education and the Bureau of Education Finance Research of the New York State Education Department. Prepared by the Education Commission of the States for the New York State Special Task Force on Equity and Excellence in Education.

TABLE 2

The Relationship Between Full Value Per Pupil (RWADA), Approved Operating Expenditures Per Pupil (TAPU), and Full Value Property Tax Rate (In Mills) Pupil Weighted Deciles, New York State (1977-78)

Deciles of Full Value Per Pupil (RWADA) (Average Value)	Approved Operating Expenditures Per Pupil (TAPU)	Property Tax Rate (Full Value, in Mills)
First Decile ($ 30,472)	$1,455	16.09
Second Decile (37,982)	1,571	19.86
Third Decile (42,299)	1,664	20.92
Fourth Decile (46,466)	1,641	18.98
Fifth Decile (50,865)	1,725	20.46
Sixth Decile (56,514)	1,825	20.78
Seventh Decile (62,923)	1,931	21.44
Eighth Decile (71,696)	2,021	21.03
Ninth Decile (86,756)	2,203	21.57
Tenth Decile (132,670)	2,648	20.18
New York City: (81,506)	2,101	22.52
Rest of State: (61,732)	1,867	20.05
Statewide Average: (67,715)	1,938	20.79

SOURCE: Based on data provided by the Information Center on Education and the Bureau of Education Finance Research of the New York State Education Department. Prepared by the Education Commission of the States for the New York State Special Task Force on Equity and Excellence in Education.

TABLE 4

The Relationship Between Approved Operating Expenditures Per Pupil (TAPU) And Educational Staff Characteristics By Pupil Weighted Deciles, New York State (1977-78)

Deciles of Approved Operating Expenditures Per Pupil (TAPU) (Average Value)	Total Professional Staff Per Thousand Pupils (TAPU)	Median Salary of Teachers	Training and Experience of Professional Staff	
			Percent with Bachelors Degree	Percent with Less Than Four Years Experience
First Decile ($1,455)	53.10	$12,716	33%	13%
Second Decile (1,571)	54.22	13,020	29	10
Third Decile (1,664)	55.69	13,191	27	9
Fourth Decile (1,641)	56.19	15,044	26	7
Fifth Decile (1,725)	57.02	15,851	24	8
Sixth Decile (1,825)	59.69	16,654	20	6
Seventh Decile (1,931)	56.39	19,109	15	5
Eighth Decile (2,021)	58.24	19,702	17	5
Ninth Decile (2,203)	61.25	20,636	10	3
Tenth Decile (2,648)	68.56	22,037	9	4
New York City (2,101)	59.69	19,250	7	3
Rest of State (1,867)	58.05	16,733	21	7
Statewide Average (1,938)	58.55	17,503	17	6

SOURCE: Based on data provided by the Information Center on Education and the Bureau of Education Finance Research of New York State Education Department. Prepared by the Education Commission of the States for the New York State Special Task Force on Equity and Excellence in Education.